

APPENDICES

RELATED TO THE

PROGRAMMATIC AGREEMENT

AMONG

U.S. NUCLEAR REGULATORY COMMISSION

U.S. BUREAU OF LAND MANAGEMENT

SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE

POWERTECH (USA), INC.

AND

ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE

DEWEY-BURDOCK IN SITU RECOVERY PROJECT

LOCATED IN CUSTER AND FALL RIVER COUNTIES

SOUTH DAKOTA

DRAFT Appendix A – Federal Actions, Undertaking, and Area of Potential Effects

Federal Actions

On August 10, 2009, Powertech (USA), Inc. (Powertech) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a new source material license to construct and operate an In-Situ Recovery (ISR) facility at the proposed Dewey-Burdock ISR Project site and to conduct aquifer restoration, site decommissioning, and reclamation activities. Based on the application, the NRC's federal decision is to either grant or deny the license.

The Atomic Energy Act of 1954, as amended, authorizes the NRC to issue licenses, either as a general or specific license, to qualified applicants for the receipt, possession, and use of byproduct and source materials resulting from the removal of uranium ore from its place of deposit in nature. An NRC specific license is issued to a commercial uranium or thorium ISR facility pursuant to the NRC implementing regulations in Title 10 of the Code of Federal Regulations (10 CFR) Part 40.

The U.S. Bureau of Land Management (BLM) manages public lands in accordance with the Federal Land Policy and Management Act of 1976. BLM manages 97 ha [240 ac] of land within the proposed Dewey-Burdock ISR Project area. The applicant controls the locatable mineral rights on this land through Federal Lode Claims and secures access to mineral rights through the terms of the General Mining Act of 1872. Under 43 CFR Subpart 3809, BLM is required to review the environmental impacts of federal actions to assure that there is no "unnecessary or undue degradation of public lands." BLM has requested to be, and is acting as, a cooperating agency with NRC to evaluate the impacts of the Plan of Operations for the proposed Dewey-Burdock ISR Project in accordance with the National Memorandum of Understanding between the two agencies.

Undertaking: Project Location and Proposed Activities

The proposed Dewey-Burdock ISR Project is located within the Great Plains physiographic province on the edge of the Black Hills uplift. The proposed project area covers 4,282 ha [10,580 ac] and is composed of two contiguous areas: the Burdock area and the Dewey area (Figure 1.0). The Burdock area is located in the following townships and ranges: (i) Township 7 South, Range 1 East, Sections 1, 2, 3, 10, 11, 12, and portions of Sections 14 and 15 and (ii) Township 6 South, Range 1 East, Sections 34, 35, and portions of Section 27. The Dewey area is located in the following townships and ranges: (i) Township 7 South, Range 1 East, Section 5 and portions of Section 4 and (ii) Township 6 South, Range 1 East, Sections 29, 30, and 32, and portions of Sections 20, 21, 28, 31, and 33. Approximately 4,185 ha [10,340 ac] of the proposed project area are in the hands of private landowners, while approximately 97 ha [240 ac] are U.S. Government lands managed by the BLM (Powertech, 2009 a,b).

The applicant's proposed project will include processing facilities and sequentially developed wellfields sited in two contiguous areas: the Burdock area and the Dewey area. As uranium recovery activities cease at a wellfield, the area will be restored and reclaimed while a new wellfield and its supporting infrastructure is developed. Under the applicant's proposal, ISR methods will be used to extract uranium from sandstone-hosted uranium orebodies in the Fall River Formation and the Chilson Member of the Lakota Formation that make up the Inyan Kara Group. The extracted uranium will be loaded onto ion exchange (IX) resin at a central processing plant in the Burdock area and a satellite facility in the Dewey area. All processing of the uranium-loaded IX resin, precipitation, drying, and packaging of the final "yellowcake" product, will take place at the Burdock central processing plant.

Project Area of Potential Effects

The area of potential effect (APE) for the review of effects on historic properties at the proposed Dewey-Burdock ISR Project is the area that may be directly or indirectly impacted by the construction, operation, aquifer restoration, and decommissioning of the proposed project. The APE for the proposed Dewey-Burdock ISR Project coincides with the extent of potential ground disturbance resulting from proposed facility construction and operational activities. The introduction of new visual, auditory, or other sensory elements also has the potential to diminish the integrity of historic properties in the project area.

The extent of the APE for facility construction and operations will depend on the disposal option used at the proposed project to dispose of liquid waste. The applicant plans to dispose of liquid wastes generated during uranium recovery operations through deep injection wells, land application, or a combination of both methods. The APE for facility construction and operations for all the liquid waste disposal options totals 1,067 ha [2,637 ac] (Figure 1.0). This area includes a 969 ha [2,394 ac] buffer zone surrounding 98.3 ha [243 ac] of projected areas for the plant facilities, wellfields, ponds, roads, and pipelines. If land application is used for liquid waste disposal, the APE for facility construction and operations will include an additional maximum area of approximately 506 ha [1,250 ac] surrounding proposed land application areas (Figure 1.0). The proposed land disturbance breakdown for deep injection wells and land application options are listed in below:

Under the Deep Injection Well option, a total of 243 acres will be disturbed (see breakdown below).

Facilities/Infrastructure	Surface Disturbance
Site Buildings	9.7 ha [24 ac]
Trunkline Installation	10.1 ha [25 ac]
Access Roads	8.5 ha [21 ac]
Wellfields	56.7 ha [140 ac]
Impoundments (ponds)	13.4 ha [33 ac]
Total	98.3 ha [243 ac]

Source: Powertech (2010a)

Under the Land Disposal Option an additional 1,188 acres will be disturbed (see breakdown below).

Facilities/Infrastructure	Surface Disturbance
Site Buildings	9.7 ha [24 ac]
Trunkline Installation	10.1 ha [25 ac]
Access Roads	8.5 ha [21 ac]
Wellfields	56.7 ha [140 ac]
Impoundments (ponds)	55.0 ha [136 ac]
Irrigation Areas	425.7 ha [1,052 ac]
Total	565.7 ha [1,398 ac]

Source: Powertech (2010a)

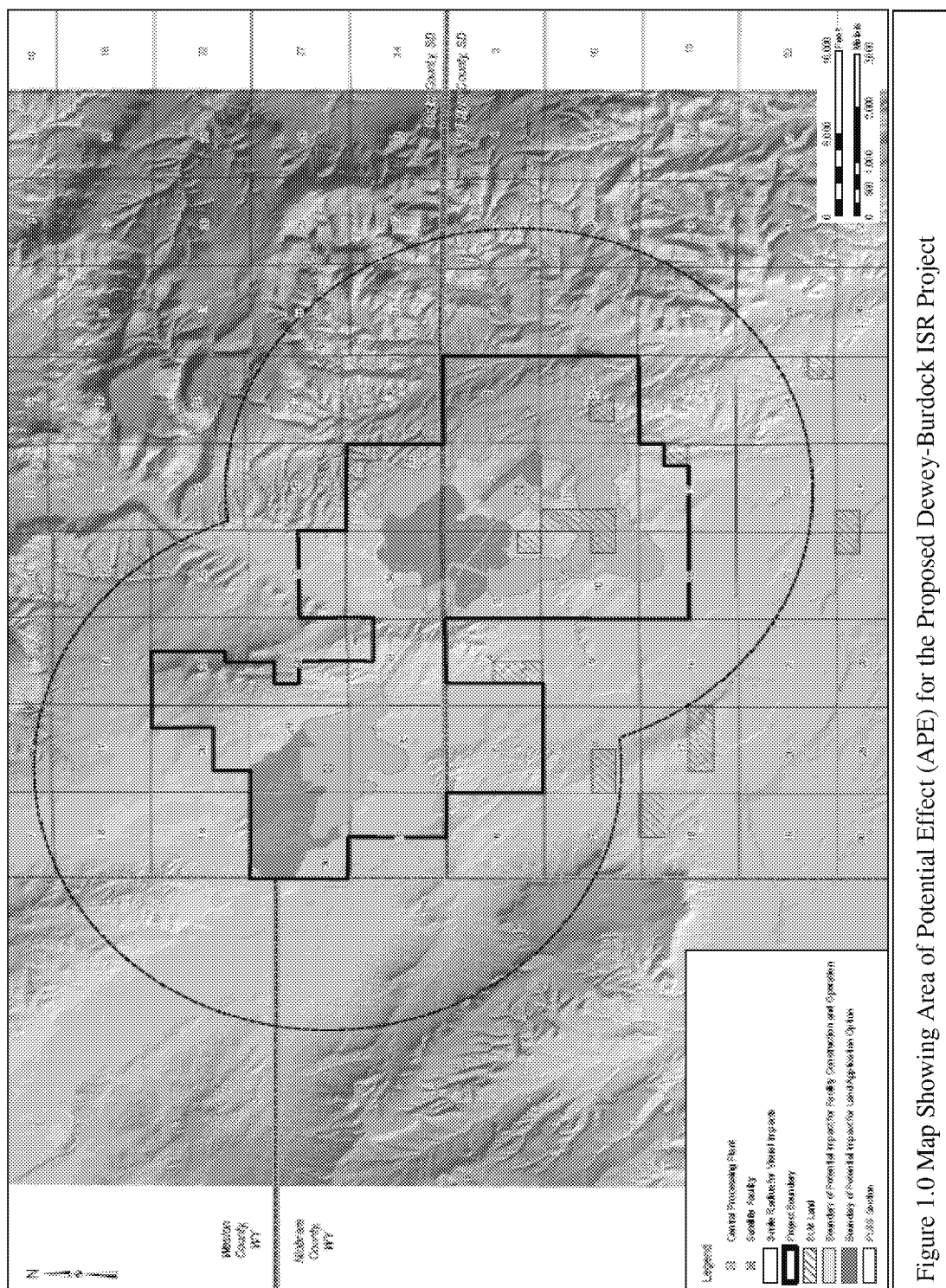
The extent of the APE for visual impacts (indirect effects) includes areas within a 4.8 km [3 mi] radius of the central processing plant in the Burdock area and the satellite processing facility in the Dewey area (see Figure 1.0). The central processing plant and satellite processing facility will be the tallest buildings constructed at the proposed Dewey-Burdock ISR Project site. Based on proposed locations of the central processing plant and the satellite processing facility, the APE for visual impacts will extend a maximum

of 2.33 km [1.45 mi] from the eastern project boundary in the Burdock area and a maximum of 2.7 km [1.7 mi] from the western project boundary in the Dewey area (see Figure 1.0).

Development of a Programmatic Agreement

The NRC determined a phased process for compliance with Section 106 of the NHPA is appropriate for this undertaking, as specifically permitted under 36 CFR § 800.4(b)(2). Powertech has not determined the location and extent of ground-disturbing activities associated with the installation of electrical transmission lines necessary for this project. As a result, completion of identification, evaluation, effect determinations, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects of historic properties will be carried out in phases, as set forth in this Programmatic Agreement (PA).

Additionally, the need for land application method of waste disposal is still undetermined. Although the applicant's preferred method for disposal of waste is by deep injection well, if a permit is not obtained from EPA for deep injection well method, the applicant will pursue land application of treated liquid effluent. If the capacity of either method is limited, the applicant will pursue a combination of both deep injection and land application method. For this reason, the precise locations of possible future disturbances within the boundary of the land application waste disposal option are unknown hindering the effect determination for those historic properties identified within this boundary. As avoidance is the preferred method to preserve cultural resources, phasing evaluation and effect determination of these sites until the applicant determines the land application option is necessary will limit unnecessary field testing for eligibility.



References:

10 CFR Part 40. *Code of Federal Regulations*, Title 10, *Energy*, Part 40, Appendix A. “Criteria Relating to the Operation of Uranium Mills and to the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily from their Source Material Content.” Washington, DC: U.S. Government Printing Office.

Powertech. “Application for Source Material License, Dewey-Burdock Uranium Project Application for NRC Uranium Recovery License—Environmental Report.” Letter (August 10) to NRC Submitting Source Material Licensing Application. Docket No. 040-09075. ML092870153. Greenwood Village, Colorado: Powertech. 2009a.

Powertech. “Dewey-Burdock Project, Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota—Environmental Report.” Docket No. 040-09075. ML092870160. Greenwood Village, Colorado: Powertech. 2009b.

Powertech. “Dewey-Burdock Project, Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota ER_RAI Response August 11, 2010.” ML102380516. Greenwood Village, Colorado: Powertech. 2010a.

DRAFT Appendix B – Cultural Resource Identification and Consultation Efforts

1. Class III Archeological Investigations

The NRC staff reviewed the Class III cultural resource investigations and evaluative testing reports prepared by the Archaeology Laboratory, Augustana College (ALAC) on behalf of the applicant for the proposed Dewey-Burdock ISR Project (Kruse, et al., 2008; Palmer and Kruse, 2008; Palmer 2008, 2009, 2012). The investigations included an archival and historic review of available sources, a search of Archeological Research Center-maintained records and collections, and review of published field reports. A review of available data shows that six surveys have been conducted within the project boundary of the proposed Dewey-Burdock site (Kruse, et al., 2008). A total of 57 archaeological sites were previously recorded within the proposed project area (Kruse, et al., 2008).

Field investigations of the proposed project area were conducted by pedestrian surveys of 4,173 ha [10,311 ac] between April and August 2007 and an additional 526 ha [1,300 ac] between July and September 2008. The 2007 and 2008 field investigations included evaluative testing at 43 sites. In 2011, additional evaluative testing at 20 unevaluated sites located within the project boundary provided data for recommendation on National Register of Historic Places (NRHP) eligibility (Palmer and Kruse, 2012). As a result of the evaluative testing, one site, 39FA1941, was recommended as eligible for listing on the NRHP and 19 sites were recommended ineligible for listing on the NRHP (Palmer and Kruse, 2012). Results of the Class III cultural resource investigations are presented in the following sections.

Archaeological Sites

NRC reviewed site data on over 200 archaeological sites recorded within the proposed project area. During the field investigation, a number of small, individual sites were combined into larger, single sites. Fifteen (15) archaeological sites within the APE, including two containing cairns and burials, have been recommended as eligible for listing on the NRHP. South Dakota State Historic Preservation Office (SD SHPO) has previously concurred with the sites recommended eligible to the NRHP under one or more criteria of eligibility in Table 1-1 (SD SHPO, 2012). As a result of additional information obtained from BLM and Tribal Representatives, eligibility recommendation to these two of the fifteen sites (39CU0578 and 39CU0584) has been updated and is presented in Table 1.0.

The SD SHPO has also reviewed and concurred with NRC's and BLM's determination of eligibility for the remaining cultural properties as well as those sites identified by the Tribes within the 10,580-project boundary. These determinations are listed in Table 1.0. Additional sites adjacent to the project boundary are also included in Table 1.0

Table 1-1. List of Archaeological Sites Within the Proposed APE Recommended Eligible for Listing on the NRHP*

Historic Property (Site Number, Structure Identification, or Historic District)	Description	NRHP Determination
39CU0271	Native American and Archaic artifact scatter and occupation site on a ridge slope with a cairn feature	Eligible, Criterion D
39CU0577	Native American/Euroamerican Occupation site; artifact scatter	Eligible, Criterion D
39CU0584	Native American occupation site and burial on a ridge slope	Eligible, Criterion D
39CU2735	Archaic- Prehistoric occupation site	Eligible, Criterion D
39CU0578	Native American/Euroamerican Dump and occupation site on a ridge slope	Eligible, Criterion D
39CU0586	Native American and Late Archaic occupation site on a ridge crest	Eligible, Criterion D
39CU0588	Native American occupation site on a ridge crest	Eligible, Criterion D
39CU2733	Native American hearth and artifact scatter on a ridge slope	Eligible, Criterion D
39CU2738	Native American occupation site on a ridge crest	Eligible, Criterion D
39CU0590	Native American artifact scatter on a ridge saddle	Eligible, Criterion D
39CU0593	Native American and Euroamerican occupation and artifact scatter on a hill slope	Eligible, Criterion D
39CU3592	Native American artifact scatter and hearth site	Eligible, Criterion D
39FA1941	Native American artifact scatter and hearth site	Eligible, Criterion D
39CU2000	Historic Railroad	Eligible, Criteria A and C
39FA2000	Historic Railroad	Eligible, Criteria A and C
Sources: Kruse, et al. (2008); Palmer and Kruse (2008, 2012); Palmer (2009)		
*Recommended eligible by ALAC and NRC. SD SHPO has concurred with these recommendations (SD SHPO, 2012).		

2. Tribal Cultural Survey Results

In June 2011, during the first face-to-face meeting, interested Tribes, and consulting Tribal representatives in attendance requested that a traditional cultural property (TCP) survey be conducted to identify places of religious and cultural significance to Tribes that could be affected by the proposed project. To facilitate the identification of TCPs, the NRC communicated the Tribes' request for a field survey and worked with the applicant to gather necessary information to schedule and conduct the survey. In October 2011, the NRC provided consulting Tribes with maps of all known archeological sites and requested information from the Tribes on how to obtain information on properties of significance to the Tribes, including the implementation of tribal surveys.

Between February and November 2012, the NRC consulted with Tribal Historic Preservation Officers (THPO) and other Tribal Representatives, the South Dakota State Historic Preservation Officer (SD SHPO), BLM, the U.S. Environmental Protection Agency (EPA), and SRI Foundation (the applicant's consultant) on developing an approach for identifying historic properties of cultural and religious significance to Tribes. After numerous communications via teleconferences, solicitation of and negotiations on proposed work plans, and exchanges of letters and emails, the consulting parties were unable to reach agreement on scope of field investigations and compensation for the TCP survey (see additional discussion under Tribal Consultation section of the Appendix B).

In December 2012, the NRC staff advised all consulting Tribes that the Dewey-Burdock site would be open for interested Tribes to conduct on-the-ground surveys in the spring of 2013.¹

On February 8, 2013, the NRC staff invited the participation of 23 Tribes interested in the proposed Dewey-Burdock ISR Project in a field survey of the entire project area to identify properties of religious and cultural significance to Tribes. In the spring of 2013, the Dewey-Burdock project site was open to each consulting Tribe and each Tribe was invited to conduct a field survey implementing its own survey methodology. The NRC invited interested Tribes to investigate any areas within the 4,282 ha [10,580 ac] Dewey-Burdock site during the month of April 2013. Financial support was offered for three representatives; although additional surveyors could participate. Tribes were asked to respond to the NRC no later than March 12, 2013.

Seven Tribes participated in the field survey at the proposed Dewey-Burdock site; they were the Northern Arapaho Tribe, Northern Cheyenne Tribe, Turtle Mountain Band of Chippewa Indians, Crow Creek Sioux Tribe, Cheyenne and Arapaho Tribes of Oklahoma, Crow Nation, and Santee Sioux Tribe. The NRC staff received detailed written reports with NRHP eligibility recommendations from three of the seven Tribes who participated in the tribal cultural surveys (Northern Arapaho Tribe, Northern Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma). The Crow Nation provided the NRC staff field notes identifying sites of interest to that Tribe.² A detailed list of sites identified during the tribal field survey with management recommendations is included below in Table 1.0. The survey reports prepared by the Tribes, along with maps recording the location of the properties identified during the tribal cultural survey are on file at NRC and at each of the respective tribal offices.

The tribal survey teams identified new artifact discoveries or cultural features of interest to Tribes at 24 previously reported archaeological sites, as well as 47 additional locations. In total, the tribal survey teams identified and investigated 71 tribal sites. A number of the 47 new discoveries identified by Tribes are adjacent to known archaeological sites and current archaeological site boundaries could be expanded to include these new discoveries. In addition, several new discoveries are located in close proximity to one another and may be culturally-related.

Most of the new discoveries identified in the tribal cultural surveys are evaluated as individual tribal sites. For those discoveries where the Tribes provided information linking cultural relationships to the newly discovered features and known archaeological sites, or between groups of individual tribal cultural features, this information is provided in the summary Table 1.0.

Tribal Review of Previously Reported Archaeological Sites

Tribal survey teams recorded 81 cultural features within the boundaries of 24 known archaeological sites. Many of the cultural features recorded by tribal survey teams correspond to features identified in the archaeological surveys; however, many of the features represent new discoveries. Tribal teams also made specific recommendations on NRHP-eligibility for four archaeological sites that were investigated, but which did not produce new cultural features.

¹ Letter to Tribal Leaders Responding to Comments Received regarding Tribal Survey, Dewey-Burdock ISR project. (December 14, 2013) (ADAMS Accession No. ML12335A175).

² The Tribes submitting reports and field notes requested the original reports be maintained by the NRC as confidential information, due to the sensitive religious, ceremonial, and spiritual information they contain. Summaries of the reports, with confidential information withheld, were distributed to the parties to the Section 106 consultation and that information is contained in this Appendix.

Tribal Sites: New Discoveries

A total of 47 new discoveries were recorded as a result of the tribal cultural survey. Forty-four represent individual tribal sites or individual cultural features and each was assigned an individual survey number. Three tribal sites represent associated cultural features within a single site. For example, 11 GPS readings were taken to record the location of individual stones that make up a single stone feature (TS080-TS089, TS098). Five associated tribal features (TS007-TS011) are part of another tribal site. One cultural feature was assigned duplicate survey numbers (TS041 and TS042).

Twelve of the 47 newly discovered cultural features were identified outside the license boundary. Five features were discovered on private land (TS024, TS061, TS062, TS075, TS079), five discoveries are located on BLM property (TS125, TS126, TS127, TS128, TS129), and two discoveries are located on U.S. Forest Service (USFS) property (TS106, TS107). Sites TS107 and TS125 were identified as possible gravesites. TS106 and TS107 were recommended eligible for listing on the NRHP under criteria A and C. Eligibility recommendations were not provided for the other 10 cultural features or sites. Thirty-five of the new discoveries are located within the project license boundary. Ten of these tribal sites have been recommended as NRHP-eligible under one or more eligibility criteria. TS002, TS118, and TS120 are eligible for listing under Criterion A. TS145 is recommended as eligible under Criterion D. TS007-011 is recommended as eligible under Criteria A and D. TS040, TS041-TS042, TS047, and TS080-T089, TS098 are recommended as eligible under Criteria A and C. TS006, a gravesite, is recommended as eligible under Criteria A, C, and D.

NRHP recommendations were not provided for 25 of the 35 new discoveries recorded within the project license boundary (TS003, TS005, TS023, TS028, TS030, TS036, TS037, TS048, TS049, TS050, TS051, TS052, TS063, TS064, TS065, TS066, TS090, TS091, TS092, TS093, TS094, TS095, TS097, TS131, and TS144). These features include isolated artifact finds, animal bone concentrations, stone circles, cairns, and possible fasting sites. TS023, TS048, TS049, TS050, and TS131 were identified during the field survey as possible gravesites. The NRC recommends that the applicant avoid these sites because they may contain human remains, although Tribes have not recommended these sites for listing on the NRHP.

3. Visual Effects Assessment (indirect effects)

In consultation with the SD SHPO and other consulting parties, the NRC staff completed an assessment of the project's potential visual impacts on historic properties (i.e., properties of any type listed in or considered eligible for listing on the NRHP). This assessment considered whether the construction of the central processing plant and satellite facility would have a visual effect on historic properties. The study assessed whether the introduction of new visual changes in the form of new processing facilities could diminish the aspects of integrity that qualify an historic property for inclusion on the NRHP. NRC's assessment considered potential visual effects on the integrity of each property's location, design, setting, materials, workmanship, feeling, or association, in accordance with the Section 106 regulations at 36 CFR 800.5(a)(1). Setting, feeling, and association are generally those aspects of integrity considered most sensitive to visual intrusions and these aspects of integrity and thus, are most likely to contribute to the historic significance of historic properties considered eligible under criteria A, B, or C. Integrity of setting is not usually deemed a contributing characteristic for properties eligible under Criterion D alone, i.e., based only on the historic information they provide.).

NRC's assessment of visual effects included historic properties situated within a 4.8 km [3-mi] radius of the tallest or most prominent building within each processing facility. This assessment therefore includes historic properties located within the license boundary, as well as those near and outside the license

boundary. The 4.8 km [3 mi] radius was adopted after: (i) consultation with the SD SHPO, (ii) consultation with BLM, and (iii) consideration of a previous assessment done for the Dakota, Minnesota, and Eastern Railroad's (DM&E) Powder River Basin Expansion project (HDR Inc., 2009). Due to the proposed project's close proximity to the state of Wyoming, the NRC staff also consulted with the Wyoming State Historic Preservation Office (WY SHPO) to determine whether reviewing properties located within a 4.8 km [3 mi] radius of the processing facilities would be acceptable for purposes of assessing potential impacts to significant cultural and historical properties in the eastern portion of Wyoming. The WY SHPO staff agreed with NRC's proposed research approach.

For the evaluation of potential visual effects to historic properties in South Dakota, the NRC staff compiled a list of 31 historic properties that are listed on the NRHP or are eligible for listing on the NRHP under criteria A and/or C. No historic properties within the project area appear to qualify as significant under Criterion B. Historic properties eligible for the NRHP solely under Criterion D were not evaluated for potential visual effects. Because these properties are significant for the important historic information they provide, rather than their setting, feeling, and association, they are unlikely to be affected by visual changes. The 31 historic properties include one NRHP-listed historic district, the Edna and Ernest Young Ranch (90000949) also known as the Bakewell Ranch (CU00000050). The Young Ranch historic district encompasses several ranch buildings, including the principal residence, which contribute to its significance. A nearby homestead district, known as the Richardson Homestead (CU00000052), is considered not eligible, but it includes one individually eligible log barn (CU02500002). Other NRHP-eligible properties are a historic bridge (Beaver Creek Bridge, FA00000111) 19 archaeological sites, and 9 tribal sites.

The Beaver Creek Bridge (Structure FA00000111) is located southwest of the project boundary, but falls within the 4.8 km [3 mi] radius for the central processing plant. It is the only historic property outside the license boundary evaluated in this visual effects determination. Two rock art sites in Fall River County (39FA2530, 39FA2531) are located just outside the 4.8 km [3 mi] range for the central processing plant. No other NRHP-listed or eligible properties were identified outside the license boundary. Table 1.0 summarized identified sites impact determination.

A review of NRHP listings for the State of Wyoming and state inventory records on file at the Wyoming Cultural Records Office at the University of Wyoming, Laramie, Wyoming revealed one NRHP-eligible property in Wyoming is within a 4.8 km [3 mi] radius of the proposed satellite facility. The environmental setting of the Wyoming property is not among the characteristics that contribute to its cultural and historical significance, and for this reason the property was not included in the line-of-sight (LOS) study. NRC determined no further consultation with the Wyoming SHPO is warranted for this project.

4. Tribal Consultation

The federal government and the State of South Dakota recognize the sovereignty of federally recognized Indian Tribes. Pursuant to Section 106 of the NHPA, federal agencies must consult and coordinate with each tribal government that may have an interest in a proposed federal action. Executive Order 13175 (November 2000), *"Consultation and Coordination with Indian Tribal Governments,"* excludes, "independent regulatory agencies, as defined in 44 U.S.C. §3502(5)" from the requirements of the Order. Section 8 of the Order states, "Independent regulatory agencies are encouraged to comply with the provisions of this order." Although the NRC is explicitly exempt from the Order, the Commission remains committed to its spirit. The agency has demonstrated a commitment to the objectives of the Order, by implementing a case-by-case approach to interactions with Native American tribes, which

encourages both the NRC and Tribal governments to initiate outreach and communication on issues of mutual interest.

As part of its Section 106 obligations found in the regulations at 36 CFR §800.2(c)(2)(B)(ii)(A), the NRC provides Indian tribes:

a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties and evaluation of historic properties, including those of religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.

The NRC staff formally initiated the Section 106 consultation process for the proposed Dewey-Burdock ISR Project in March, 2010³.

The SD SHPO identified 20 Native American tribes that might attach historic, cultural, and religious significance to historic properties within the proposed Dewey-Burdock ISR Project area and provided this information to the NRC. The NRC staff contacted the 20 tribal governments by letters dated March 19, 2010; September 10, 2010; and March 4, 2011. The NRC staff invited the Tribes to participate as consulting parties in the NHPA Section 106 process and requested assistance in identifying tribal historic sites or cultural resources that may be affected by the proposed action. Specifically, the NRC staff solicited information regarding properties of religious and cultural significance to Tribes. The Tribes contacted were:

- Cheyenne River Sioux Tribe—South Dakota
- Crow Creek Sioux Tribe—South Dakota
- Flandreau Santee Sioux Tribe—South Dakota
- Lower Brule Sioux Tribe—South Dakota
- Oglala Sioux Tribe—South Dakota
- Rosebud Sioux Tribe—South Dakota
- Sisseton-Wahpeton Sioux Tribe—South Dakota
- Standing Rock Sioux Tribe—South Dakota
- Yankton Sioux—South Dakota
- Three Affiliated Tribes (Mandan, Hidasta, and Arikara Nation)—North Dakota
- Turtle Mountain Band of Chippewa—North Dakota
- Spirit Lake Tribe—North Dakota
- Lower Sioux Indian Community—Minnesota
- Fort Peck Assiniboine and Sioux—Montana
- Northern Cheyenne Tribe—Montana
- Northern Arapaho Tribe—Wyoming
- Eastern Shoshone Tribe—Wyoming
- Santee Sioux Tribe—Nebraska

³ In November 2009, the NRC staff offered to meet with the Oglala Sioux Tribe while the staff was in South Dakota for information gathering meeting with other federal and local governments in December 2009. The NRC was advised by Oglala Sioux Tribal representative that Tribal leadership was in transition and the Tribe would be unable to meet with the NRC in December 2009. (ADAMS Accession No. ML102380609).

- Ponca Tribe—Nebraska
- Crow Tribe—Montana

The NRC staff contacted the Cheyenne and Arapaho, the Pawnee, and the Omaha Tribes in February 2013, after it was brought to the attention of the NRC staff that these Tribes also had historical and cultural links to the proposed project area.

By letter dated April 7, 2010, the Turtle Mountain Band of Chippewa–North Dakota responded to NRC and stated that the proposed project would not have an effect on historic properties of importance to the Turtle Mountain Band of Chippewa Indians. The THPO also stated that “determination of No Historic Properties Affected is granted for the project to proceed”.

The NRC staff continued its efforts to engage in consultation with Tribes that might be affected by the proposed action with follow-up telephone calls and by sending emails to further gather information related to identification efforts and coordinate meetings.

On September 10, 2010, the NRC staff sent another letter inviting the Tribes to participate in a consultation to help facilitate the identification of areas on the proposed Dewey-Burdock site that the Tribes believe have traditional religious or cultural significance. The NRC staff also followed up with phone calls and emails to ensure tribal officials received the correspondence.

By letter dated September 20, 2010, Mr. Perry “No Tears” Brady of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara Nations–North Dakota) responded that the tribe had determined there would be no adverse effects on historic or cultural resources important to the Mandan, Hidatsa, and Arikara Nations within the proposed project area.

The Sisseton-Wahpeton Oyate Tribe, Rosebud Sioux Tribe, Lower Brule Sioux Tribe, and Yankton Sioux Tribe, responded by letters dated November 2, 2010; November 7, 2010; November 15, 2010; and December 3, 2010, respectively, expressing interest in becoming consulting parties to the proposed project. The Sisseton-Wahpeton Oyate and Rosebud Sioux THPOs recommended that NRC undertake group consulting, whereby a number of tribal representatives would participate in a meeting, possibly hosted by the Oglala Sioux Tribe. The Yankton Sioux THPO requested face-to-face consultation and expressed concerns regarding protection of traditional cultural properties (TCPs) within the project area. While the term TCP does not appear in the NHPA or its implementing regulations, the Tribes apply this term to historic properties of religious and cultural significance to Indian tribes that may be affected by an undertaking. The NRC uses the term in this context.

By letter dated January 31, 2011, the Oglala Sioux THPO accepted the invitation to participate as a consulting party and stated that the proposed Dewey-Burdock project represents a substantial potential threat to the preservation of cultural and historic resources of the Oglala Sioux Tribe. The THPO stated the proposed project site is located within an area of which Sioux Tribes, along with the Cheyenne, Arapahoe, Crow, and Arikara Tribes, possess intimate cultural knowledge. The THPO stated impacts from the proposed project may include not only site-specific physical impacts, but also intangible impacts to the integrity of the area from cultural, historical, spiritual, and religious perspectives. The letter also requested NRC assistance in facilitating a site visit and regional meeting to provide all affected Tribes an opportunity to review and identify the cultural and historic resources at stake.

Mr. Hubert B. Two Leggings (Crow Tribal Cultural Resource Director/Renewable Resource Supervisor) of the Crow Tribe of Montana responded by email on March 9, 2011, indicating the Dewey-Burdock Project

area has religious and cultural significance to the Crow Tribe. Mr. Two Leggings accepted the invitation for formal consultation and stated the Crow Tribe wanted to be a consulting party.

By letter dated May 12, 2011, the NRC staff invited THPOs and/or Cultural Resources Officers to an informal information gathering meeting on June 8, 2011, at the Prairie Winds Casino and Hotel on the Pine Ridge Reservation in South Dakota. The purpose of the meeting was to help the NRC identify tribal historic sites and cultural resources that may be affected by the proposed Dewey-Burdock ISR Project, the Crow Butte North Trend, and Crow Butte License Renewal ISR Projects in Nebraska. Representatives of six Tribes, the Oglala Sioux, Standing Rock Sioux, Flandreau-Santee Sioux, Sisseton-Wahpeton Oyate, Cheyenne River Sioux, and Rosebud Sioux attended. BLM and SD SHPO staff also attended.

During the June 8, 2011 meeting, tribal officials expressed concerns about the identification and preservation of historic properties of traditional religious and cultural importance to Tribes at the proposed Dewey-Burdock and Crow Butte sites. Tribal officials stated historic and cultural resource studies of the sites should be conducted with tribal involvement. The SD SHPO stated Tribal representatives would need access to the Dewey-Burdock site to assist in identification of historic properties. A transcript of this meeting is available through the NRC Agencywide Documents Access and Management System database on the NRC website (<http://www.nrc.gov/reading-rm/adams.html>).

In conjunction with the information gathering meeting, the applicant hosted a visit to the Dewey-Burdock ISR Project site on June 9, 2011. Tribal officials, the NRC staff, BLM, SD SHPO, and South Dakota Historical Society Archaeological Research Center (ARC) staff interacted with the applicant's personnel and archaeologists from Archaeology Laboratory of Augustana College during the site visit. The Level III cultural resource evaluations at the site were conducted by the Archaeology Laboratory of Augustana College. The Dewey-Burdock site visits included a presentation of the proposed project identifying the location of facilities and wellfields. The Augustana College staff provided an overview of the results of archaeological and cultural evaluations. At the conclusion of the presentations, participants toured the proposed Dewey-Burdock ISR Project site. The group visited several locations to view and investigate cultural and historic features identified during the Level III cultural resource evaluations, including stone circles and rock alignments.

To facilitate the identification of possible historic properties of importance to Native American Tribes within the APE, the NRC began efforts to open the Dewey-Burdock site to tribal representatives for a field survey. On August 12, 2011, the NRC staff requested the applicant submit a written plan for acquiring information on historic properties within the APE.

By letter dated October 28, 2011, the NRC staff advised the Tribes that the applicant would undertake studies and surveys to provide information on properties of traditional religious and cultural importance to Tribes, as permitted under 36 CFR 800.2(c)(4). The letter informed the Tribes the applicant had engaged the services of SRI Foundation (SRI) of Rio Rancho, New Mexico, to collect information concerning historic properties that may be located in the proposed project area. The NRC authorized SRI, acting on behalf of the applicant, to contact Tribes to obtain information. However, the NRC affirmed it was legally responsible for all findings, determinations, and for maintaining government-to-government relationships with the involved Tribes.

By letter dated January 19, 2012, the NRC staff invited the THPOs to a tribal consultation held on February 14–15, 2012, at the Ramkota Best Western Hotel in Rapid City, South Dakota. Officials from 13 Tribes (Cheyenne River Sioux, Crow Creek Sioux, Crow Tribe of Montana, Eastern Shoshone, Fort Peak Assiniboin Sioux, Northern Arapaho, Northern Cheyenne, Oglala Sioux, Rosebud Sioux, Yankton Sioux, Sisseton-Wahpeton Sioux, Santee Sioux Nation, and Standing Rock Sioux) attended. In addition,

the applicant, SRI consultants, the NRC, BLM and EPA Region 8 staffs attended. At the meeting the NRC sought information on the general types and descriptions of historic properties of religious and cultural significance that were likely to be affected by the proposed project. The NRC asked how these properties could be identified and evaluated, as part of the ongoing consultations under Section 106 of NHPA.

During the February 14–15, 2012 meeting, Tribal representatives: (i) raised the need for the NRC to keep information on TCPs confidential and protected from disclosure to others; (ii) discussed developing a confidentiality agreement before submitting any traditional cultural studies to the NRC; (ii) asked that future meetings indicate the decision-making authority of the participants; (iii) volunteered to develop project-specific statements of work (SOWs) to conduct traditional religious and cultural properties studies for the proposed Dewey-Burdock project; and (iv) requested a meeting be held March 14-15, 2012, to review draft SOWs,

The NRC scheduled the March meeting, however, scheduling conflicts of many tribal representatives, led to the cancellation of the March 14–15, 2012 meeting. The NRC staff transmitted the applicant's SOW for the Dewey-Burdock project to the THPOs on March 9, 2012 and proposed a teleconference to discuss the proposed SOW in April 2012. On April 5, 2012, the NRC staff invited the Tribes to participate in an April 24, 2012 teleconference, to discuss the applicant's SOW to identify historic properties of religious and cultural significance to the Tribes.

On April 24, 2012, the NRC staff held a teleconference with staff from Powertech, Cameco, SRI, SD SHPO, EPA Region 8, BLM, and the Northern Cheyenne, Oglala Sioux, Rosebud Sioux, Northern Arapaho, Sisseton-Wahpeton, Standing Rock Sioux, Yankton Sioux, and Cheyenne and Arapaho Tribes. The consulting parties discussed the applicant's SOW: (i) the adequacy of compensation for tribal representatives conducting the fieldwork, (ii) the need for the NRC to recognize the confidentiality of information gathered by the Tribes, (iii) the amount of acreage to be covered during fieldwork, and (iv) how to accomplish tribal involvement in making NRHP-eligibility determinations.

Also discussed at the April 24, 2012 teleconference, was plan for accomplishing the tribal survey. The parties agreed that (i) tribal representatives would continue development of a draft tribal SOW; (ii) the THPOs would hold an intertribal teleconference to discuss a draft tribal SOW; (iii) a copy of a draft tribal SOW would be submitted to the NRC, after approval by all tribal officials; (iv) the NRC would distribute a draft tribal SOW to consulting parties (applicant, BLM, EPA, and SD SHPO); (v) the NRC would arrange another meeting for consulting parties to finalize an SOW, agreeable to the parties, for the identification of potential historic properties; (vi) the applicant would make the Dewey-Burdock site available to the Tribes to conduct field survey; (vii) written preliminary and final reports identifying TCPs and presenting tribal views on effects of the undertaking on these properties would be submitted to the NRC after completion of the survey; and (viii) the NRC would consider the tribal information in preparing its assessment of effects on properties under NHPA and its impact determination pursuant to NEPA. The tribal participants requested two tribal specialists be permitted access to the Dewey-Burdock site for a preliminary survey to obtain information needed to complete a detailed proposed SOW. The tribal reconnaissance of the Dewey-Burdock site took place on May 26, 2012.

On June 19, 2012, the Tribes submitted a preliminary tribal SOW for identifying properties of religious and cultural significance at the Dewey-Burdock site. The draft SOW proposed a 100 percent survey of the entire 10,580 acres of the site, the survey interval for the pedestrian survey was set at five meters or less. The draft SOW did not include estimates of the duration of the survey, the number of field workers, or the overall cost of the survey effort. Subsequently, the NRC staff held teleconferences on August 9, 2012 and August 21, 2012, to solicit details on the tribal SOW, as well as discuss the differences between

the applicant and tribal SOWs. Tribal representatives, the NRC staff, Powertech, SRI, SD SHPO, EPA Region 8, and BLM participated in these teleconferences. Discussions centered on: (i) defining the areas of potential effects (direct and indirect) that would be included in the proposed surveys, (ii) the need to provide survey cost estimates, and (iii) the need to develop a survey schedule that supported the NRC licensing and environmental review schedules. The participating Tribes requested an opportunity to revise the applicant's proposed SOW. At the close of the August 21, 2012 teleconference, the NRC staff agreed to meet with tribal representatives in Bismarck, North Dakota on September 5, 2012, in order to develop plans for completion of a TCP field survey in the fall of 2012.

The applicant informed the NRC by letter dated August 29, 2012, that it was unable to reach an agreement with the Tribes on the terms of a SOW for the field survey. The applicant stated it had been unable to obtain additional information from Tribal representative on properties of religious and cultural significance to the Tribes and therefore was unable provide information on these properties to the NRC. The applicant believed additional efforts to negotiate a mutually acceptable SOW was unlikely to be productive. The applicant, however, offered approximately \$100,000.00 in financial assistance to tribal representatives to carry out fieldwork and reporting activities. The applicant committed to working with the NRC and BLM to provide access for tribal representatives to the project area to carry out work agreed to by the Tribes.

On September 5, 2012, the NRC staff met with representatives of the Yankton Sioux, Sisseton-Wahpeton Oyate Sioux, Rosebud Sioux, Standing Rock Sioux, Northern Cheyenne, Oglala Sioux, and Crow Nation Tribes at the Kelly Inn in Bismarck, North Dakota. During this meeting, participants discussed how to proceed with development of a SOW to identify religious and cultural properties within the APE. The APE is the area in which properties of cultural significance may be affected by the undertaking. Direct effects (such as destruction, damage, or alteration of all or part of a property) and indirect effects (such as visual, audible, and atmospheric changes that affect the character or setting of a property) would be identified and evaluated. All consulting parties agreed a survey was necessary for historic property identification. The parties agreed to consult further on developing a SOW that would identify properties directly and indirectly affected by the proposed project. The area of potential indirect effect might include properties well beyond the proposed license area. In addition, the parties acknowledged the need to prepare a Programmatic Agreement (PA) to protect historic properties from future disturbances outside of areas directly affected by the proposed project.

By letter dated September 18, 2012, the NRC staff asked the consulting Tribes designate a preferred contractor, who would submit a survey proposal on their behalf. The NRC staff stipulated a cost estimate based on the area of direct effect for the initial phase of the Dewey-Burdock project be included in the proposal. The letter also responded to four NHPA-related concerns raised by the Tribes attending the September 5, 2012 meeting. The NRC agreed to develop a PA with the Tribes to address phased identification and evaluation of historic properties. The NRC committed to continue consultation with all the parties on all issues arising under Section 106 of the NHPA, including potential indirect effects. The NRC committed to maintain the confidentiality of religious, spiritual, and ceremonial information provided by the Tribes, to the fullest extent allowed by law. And, the NRC invited the Tribes to substitute an alternative means of estimating survey cost if coverage rate for estimating cost are not acceptable to the Tribes.

On September 27, 2012, Makoche Wowapi/Mentz-Wilson Consultants, LLP submitted a tribal proposal and cost estimate for a tribal field survey of approximately 2,637 acres of the Dewey-Burdock site (the 243 acres expected to undergo ground disturbance plus 969 acres of buffer zone) to the NRC. This contractor had been selected by some of the consulting Tribes to complete the cultural resources survey.

On October 4, 2012, the NRC transmitted the Makoche Wowapi/Mentz-Wilson proposal and cost estimate to the applicant for review and comment. While the proposed schedule for completion of the field survey coordinated with the timeframe for completion of the NRC environmental review, the proposal did not contain a work plan or a description of field methods and associated cost.

The NRC staff collected comparative cost information for on-the-ground surveys conducted by other federal agencies.⁴ The NRC staff used this information when it reviewed the SOWs submitted for the Dewey-Burdock project. Costs estimates were obtained for federal projects in the northern Plains region. One included costs for ethnographic studies and partial ground surveys; another included the costs for conducting field visits only to known sites. Cost estimates provided by the applicant were based on comparison with archaeological field surveys conducted by cultural resource management teams. The costs associated with archeological and partial on-the-ground surveys reviewed by the NRC staff ranged between \$20/acres to \$60/acres. No exact comparison was therefore available, but NRC noted that the estimated per-acre cost submitted by Mentz-Wilson Consultants, LLC was approximately 5 to 15 times greater than what other survey efforts have cost. The NRC staff considered the cost estimate submitted by Mentz-Wilson Consultants, LLP to be unsupported by the detail in proposal and the level of effort appropriate for Dewey-Burdock identification.

The NRC informed the Tribes by letter dated October 12, 2012, of the significant differences between the Makoche Wowapi/Mentz-Wilson Consultants, LLP proposal and the proposal the applicant set out in its August 29, 2012 letter. The NRC indicated that resolving these differences would not allow completion of a field survey at the Dewey-Burdock site in the fall 2012. The NRC requested that the Tribes provide their ideas on alternative methods⁵ for identifying potential properties of traditional religious and cultural importance to the Tribes. The NRC suggested that alternative identification methods might include opening the site to interested tribal specialists over a period of several weeks with payment for survey costs made to individual Tribes or seeking ethnohistoric and ethnographic information from tribal specialists in interviews at tribal headquarters.

Between October 15, 2012 and October 20, 2012, the NRC staff received letters and email from the Standing Rock Sioux Tribe, the Sisseton-Wahpeton Oyate Tribe, the Rosebud Sioux Tribe, and the Yankton Sioux Tribe opposing the NRC's request for alternative identification approaches. These Tribes maintained that only level of effort for identification at Dewey-Burdock was on ground survey of 100 percent of the entire license boundary performed by tribal personnel.

On October 19, 2012, the Three Affiliated Tribes and the Turtle Mountain Band of Chippewa Indians Tribe in collaboration with Kadramas, Lee, & Jackson (KLJ), a private consulting firm from North Dakota, proposed a field survey of the 1,067 ha [2,637 ac] APE for ground disturbance. The proposal included investigation of previously recorded archaeological sites, use of light detection and ranging mapping technology to locate potential rock alignments, cairns, and other stone features, and a systematic pedestrian survey of the project area. The level of effort presented in the KLJ proposal was reasonable and appropriate to the project area and estimated costs were in line with the range of survey costs obtained for other tribal surveys identified by the staff for other projects.

⁴ Since 2012, the NRC has conducted on the ground surveys for two projects that are in line with the approached used for the DB project.

⁵ Many of the consulting Tribes reject archaeological survey methods that incorporate landform patterning or "predictive modeling" of site locations. For this reason, the NRC requested alternative methods for identification.

The NRC staff confirmed the proposed KLJ survey effort would be led by two THPOs and one former THPO employed by KLJ. In addition, the KLJ survey effort welcomed participation of other Tribes and suggested that additional compensation be provided for other Tribal surveyors. For these reasons, the NRC endorsed the level of effort represented by the KLJ proposal and recommended that the applicant consider contracting with KLJ to lead the survey effort at the Dewey-Burdock site. To ensure all interested Tribes would have the opportunity to participate in the survey, the NRC staff requested that the applicant provide additional financial support for representatives from other Tribes. The applicant agreed to provide additional financial support for one representative for each interested Tribe, in addition to providing payment for the KLJ proposal. Additional tribal representatives would also be allowed to participate, but without compensation.

On October 31, 2012, the NRC sent a letter to the THPOs endorsing the KLJ survey approach. The letter invited all consulting Tribes to participate in the survey, noting that compensation was available for one representative per tribe. The KLJ survey proposal provided each participating tribe an independent opportunity to identify historic properties, to gather relevant information, and to provide independent recommendations regarding the NRHP eligibility of properties of traditional religious and cultural importance to the Tribes.

The NRC staff received written responses from the Standing Rock Sioux Tribe, Rosebud Sioux Tribe, Oglala Sioux Tribe, Sisseton-Wahpeton Oyate Tribe, and Yankton Sioux Tribe objecting to the survey work proposed by KLJ. The Tribes stated the NRC's endorsement of the KLJ proposal ignored the views presented by a number of Tribal representatives on how to conduct on the ground surveys. Specifically, that: (i) the Dewey-Burdock field survey must include the entire project area, not the area directly affected by the proposed project; (ii) the field survey must be conducted by qualified tribal representatives, not archaeologists; and (iii) survey approaches based on predictive modeling are not appropriate for identifying tribal sites. The Tribes also asserted the NRC was not consulting in good faith because Tribal perspectives on field surveys were not fully accepted by the NRC. Several Tribes also insisted that because early in the Section 106 process the Three Affiliated Tribes and the Turtle Mountain Band of Chippewa Indians advised the NRC the project posed no adverse effects on historic or cultural resources important to them; they were unsuited to conduct field identification for cultural places.

On December 6, 2012, the KLJ withdrew its survey proposal by telephone. On December 17, 2012, KLJ withdrew its TCP survey proposal in writing.

In its December 14, 2012 letter, the NRC staff addressed the objections to the KLJ survey proposal raised by a number of the consulting Tribes. All consulting parties were notified that KLJ would not conduct the proposed survey work. The NRC stated it would move forward with an alternative approach for the identification of cultural places, which would include a field survey component. The NRC postponed a field survey until spring 2013. The NRC reiterated its intention to develop a PA and invited all interested consulting parties to provide information relevant to the development of a PA.

On February 8, 2013, the NRC staff invited 23 Tribes, including the Cheyenne and Arapaho, Pawnee, and Omaha, to participate in a field survey in the spring of 2013. The NRC staff proposed April 1 through May 1, 2013, as survey dates, described procedures for site access, and identified the compensation for survey participation. Tribal representatives were encouraged to focus survey efforts on portions of the proposed license area that would be physically disturbed by the project; participants were advised survey teams would have access to the entire project boundary within the allowable time. Compensation for per diem and mileage expenses for a maximum of three tribal representatives from each participating Tribe would be paid by the applicant. In addition, an unconditional grant of \$10,000 would be paid to each participating Tribe. A field survey report would be submitted to the NRC, after the completion of the

fieldwork. The report would include: (i) a discussion of the areas examined; (ii) a description of each individual property examined; (iii) an evaluation of NRHP-eligibility for each individual property examined; (iv) any recommendation concerning criteria of NRHP-eligibility for previously reported archaeological site within the license area that had been visited during the field survey; and (v) recommendations for appropriate avoidance buffers or possible mitigation measures in cases where properties recommended as NRHP-eligible could be adversely affected by the proposed project. Tribes interested in participating in the survey were requested to respond by March 12, 2013.

On February 20, 2013, the NRC staff received a letter from the Standing Rock Sioux Tribe in response to the NRC letter of February 8, 2013. The Standing Rock Sioux Tribe objected to the survey approach and asserted that the NRC was not consulting in good faith because the NRC had not accepted fully their views on how the on the ground survey for cultural places should be conducted. The Standing Rock Sioux Tribe also offered comments regarding the Section 106 process being conducted for the proposed Dewey-Burdock ISR project.

The Dewey-Burdock field survey for the identification of traditional properties of religious and cultural significance to the Tribes began on April 1, 2013. Seven Tribes participated in the field survey: the Northern Cheyenne, Northern Arapaho, Crow Nation, Crow Creek Sioux, Cheyenne and Arapaho of Oklahoma, Santee Sioux, and Turtle Mountain Band of Chippewa Indians. Heavy snow required the suspension of survey work on April 9, 2013. Work resumed on April 29, 2013 and was extended through May 24, 2013; the total field investigation spanned 36 calendar days.

On April 24, 2013, the NRC staff formally invited the ACHP to become an active consulting party in the Section 106 process for the proposed Dewey-Burdock ISR Project.⁶ The NRC provided ACHP with a summary and chronology of the Section 106 consultation efforts for the proposed project.

On May 7, 2013, the NRC received a letter from the Oglala Sioux Tribe that was dated March 22, 2013.⁷ The letter stated the proposed date for the start of the field survey, April 1, 2013, did not allow sufficient time to seek the formal authorization of the Oglala Tribal Council. The Tribe also objected to the field survey methodology, stating its view that funds allocated were insufficient. The Tribe believed the NRC lacked cultural sensitivity. The Oglala Sioux Tribe did not believe direct and indirect effects on cultural resources and burial grounds would be fully assessed. And the Tribe raised a concern regarding intellectual property generated during the survey would not be adequately protected. Finally, the Oglala Sioux Tribe requested formal government-to-government consultation be conducted.

On May 23, 2013, the NRC staff hosted a government-to-government meeting to discuss proposed uranium recovery projects currently under NRC licensing review. The NRC invited more than 30 Tribes in consultation with the NRC on uranium recovery projects to meet with NRC management. The government-to-government meeting sought input of tribal leaders or designated representatives on issues related to uranium recovery projects. The NRC organized the meeting because of Tribal requests for a formal government-to-government meeting. The government-to-government meeting took place at the Ramkota Hotel and Conference Center in Rapid City, South Dakota. The Northern Cheyenne and Standing Rock Sioux THPOs attended the meeting in person while the Cheyenne River Sioux, Yankton

⁶ Letter to Advisory Council on Historic Preservation re: Update on Section 106 Activities for the Proposed Dewey-Burdock In situ Uranium Recovery project in Fall River and Custer Counties, South Dakota and a Request for Guidance and Clarification (ADAMS Accession No. ML13017A077).

⁷ The letter was addressed to the U.S. Environmental Protection Agency (EPA) and was stamped received by the EPA on April 19, 2013. EPA forwarded this letter to the NRC on May 7, 2013 (ADAMS Accession No. ML13141A362).

Sioux and Sisseton-Wahpeton Oyate THPOs called in for this meeting. From all the meeting participants, only the Northern Cheyenne THPO stated that he is representing his Tribe.

Between June 24, 2013 and July 25, 2013, the Cheyenne and Arapaho, Northern Arapaho, and Northern Cheyenne Tribes submitted survey reports to the NRC. The NRC staff also received field notes from the Crow Tribe; however, NRHP eligibility recommendations for identified sites were not provided. The Cheyenne and Arapaho Tribes survey report, dated June 24, 2013, documented sites of religious and cultural significance identified during site surveys by tribal representatives on April 23 to 25, 2013, and April 30 to May 2, 2013. NRHP-eligibility and mitigation recommendations for each identified site were included in the report. The Northern Arapaho survey report documented sites identified during surveys conducted from April 29, 2013 through May 9, 2013. The report included NRHP-eligibility and mitigation recommendations, and identified areas of importance to the Northern Arapaho Tribe, areas with no surface activity, areas to which the Tribe would like to have access to, and areas recommended to be avoided by equipment disturbance and pedestrian traffic. The Northern Cheyenne Tribe report dated July 25, 2013, described the survey methodology used by its survey team and summarized the survey results, and included NHPA-eligibility recommendations. Tribal Cultural Heritage Forms for ten cultural properties identified or investigated during the survey were included. The forms provide specific NHPA-eligibility recommendations and identify the eligibility criteria on which the Tribe relies.

On December 16, 2013, the NRC staff sent the SD SHPO a letter requesting concurrence on NRC's NRHP eligibility recommendations. The NRC staff also enclosed a copy of the tribal summary report.

On December 23, 2013, the NRC staff forwarded the tribal summary report and NRC's initial NRHP eligibility determination to all 23 consulting Tribes for a 30 day review and comment period.

On January 14, 2014, the SD SHPO concurred with NRC's NRHP eligibility recommendations (ADAMS Accession No. ML14014A307).

Since 2010, the NRC staff has had three face-to-face meetings, and three teleconferences with Tribal representatives, and we have exchanged many emails, letters, and telephone calls as summarized above.

The NRC staff will continue to consult with BLM, SD SHPO, and the consulting Tribes on all issues arising under Section 106 of the NHPA. The NRC staff will also consult with ACHP as necessary.

The NRC staff invited the 23 consulting Tribes to participate in the development of a PA and provided opportunities for the Tribes to review and comment on the successive drafts of the PA. The NRC staff hosted four webinars for the consulting parties to discuss the content of the PA. In advance of each webinar, the NRC staff distributed the working draft PA to facilitate discussion.

The NRC staff learned on February 11, 2014 that some Tribal representatives had a conflict with the NRC's February 14, 2014 webinar and thus were unable to attend the scheduled webinar hosted by the NRC. In order to accommodate those Tribes that had a conflict, the NRC staff is hosting another webinar on February 21, 2014 to discuss comments received on the final draft PA.

The participants of each webinar are as follows:

Webinar Participants	11/15/13	12/13/13	12/17/13	02/14/14	02/21/14
ACHP	X	X	X	X	
SD SHPO Project Review Officer	X	X		X	
BLM Montana office	X	X	X	X	
BLM SD Field office	X	X	X	X	
EPA R8	X	X	X	X	
Oglala Sioux Tribe	X			X	
Northern Cheyenne Tribe	X	X			
Cheyenne River Sioux Tribe		X	X		
Cheyenne and Arapaho Tribe				X	
Powertech and its consultant	X	X	X	X	
NRC and its consultant	X	X	X	X	

Table 1.0 and Table 2:0; NRHP eligibility determination and adverse impact determination are attached as a separate document due to their large size.

References:

36 CFR Part 60. *Code of Federal Regulations*, Title 36, *Parks, Forests, and Public Property*, Part 60, Section 4. "Criteria for Evaluation." Washington, DC: U.S. Government Printing Office.

36 CFR Part 800. *Code of Federal Regulations*, Title 36, *Parks, Forests, and Public Property*, Part 800. "Protection of Historic Properties." Washington, DC: U.S. Government Printing Office.

HDR, Engineering Inc. "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming." Report prepared for the Dakota, Minnesota and Eastern Railroad, Sioux Falls, SD by HDR, Inc. in Compliance with the Section 106 Programmatic Agreement for the Surface Transportation Board, Washington DC. 2009.

Kruse, J.M., T.V. Gillen, J.R. Bozell, L. Palmer, and A.A. Buhta. "A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality Within the Southern Black Hills, Custer and Fall River Counties, South Dakota." Archeological Contract Series No. 216. ML100670302, ML100670309, ML100670314, ML100670318, ML100670240, ML100670250, ML100670255, ML100670257, ML100670258, ML100670259, ML100670261, ML100670267, ML100670277, ML100670280, ML100670286, ML100670289, ML100670363, ML100670365, ML100670366, ML100670482, ML100670232. Sioux Falls, South Dakota: Augustana College, Archeology Laboratory. 2008.

Palmer, L. "A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota." Addendum 1: Additional Survey Report. Archeological Contract Series No.227. ML100670483, ML100670485, ML100670487, ML100670490. Sioux Falls, South Dakota: Augustana College, Archeology Laboratory. 2008.

Palmer, L. "Evaluative Testing of Four Sites within Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality, Southern Black Hills, Custer and Fall River Counties, South Dakota." Archeological Contract Series No. 231. Sioux Falls, South Dakota: Augustana College, Archeology Laboratory. 2009.

Palmer, L. and J.M. Kruse. "A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota." Addendum 2: Additional Survey Report. Archeological Contract Series No.229. ML100670466, ML100670472, ML100670474, ML100670478, ML100670492. Sioux Falls, South Dakota: Augustana College, Archeology Laboratory. 2008.

Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological Contract Series No. 251. ML12144A270, ML12144A279, ML12144A263. Sioux Falls, South Dakota: . Archeology Laboratory, Augustana College. 2012.

SD ARC (South Dakota Archaeological Research Center). South Dakota Archaeological

Research Center Field Site Form Manual. ML12241A387. Rapid City, South Dakota: SD ARC. June 5, 2006.

SD SHPO. "Comment (28) of Jay D. Vogt and Paige Olson, on Behalf of SD State Historical Society, on NRC-2012-0277-0001, Supplemental Environmental Impact Statement for Proposed Dewey-Burdock *In-Situ* Uranium Recovery Project in Custer and Fall River Counties, SD." Letter (December 13) from J. D. Vogt and P. Olson, South Dakota State Historical Society to C. Bladey, NRC. ML13019A059. Pierre, South Dakota: SD SHPO. 2012.

WY SHPO (Wyoming State Historic Preservation Office). "Dewey-Burdock Line of Sight Analysis." Email (September 4) from R. Currit, Senior Archaeologist, Wyoming State Historic Preservation Office to H. Yilma, NRC. ML13309B643. Cheyenne, Wyoming: WY SPO. September 4, 2013.

DRAFT Appendix C – Reporting Criteria for the Monitoring Plan

- a) On or before January 1 of each year following the commencement of operations, unless the consulting parties agree in writing that the terms of this PA have been fulfilled, Powertech shall prepare and provide a report to the NRC detailing how the applicable terms of the PA are being implemented.
- b) Powertech shall provide an annual report for the first five years, and every third year thereafter, if the PA remains in effect, unless the required signatories agree to another timeframe.
- c) Upon acceptance of this report by NRC, Powertech shall provide copies of this annual report to all agencies and consulting parties, requesting their views on the report.
- d) The agencies and consulting parties may provide comments on the report to Powertech within 30 days of receipt, and Powertech will distribute all comments to the agencies and consulting parties.
- e) If any of the required signatories or a majority of the consulting parties so request, Powertech shall coordinate a conference call with all consulting parties to review implementation of the terms of this PA, to assess the outcomes achieved, and/or to discuss issues raised in the annual report. The conference call shall be coordinated within 60 days after the request.

DRAFT Appendix D – Treatment of Human Remains on State, Private, and BLM Land

- 1) In the event of an inadvertent discovery of human remains or funerary objects on State or Private Land, the following steps shall be taken pursuant to South Dakota Codified Law Chapter 34-27-25, 34-27-28, 34-27-31:
 - a) The **Mine Manager** shall immediately halt construction activities within a 150-foot radius from the point of discovery (protection zone) and implement measures to protect the discovery from looting and vandalism. Construction activities may continue outside this protection zone. No digging, collecting or moving human remains or other items shall occur in the protection zone after the initial discovery. Protection measures would include the following.
 - 1) Flag the buffer zone around the find spot.
 - 2) Keep workers, press, and curiosity seekers away from the find spot.
 - 3) Cover the remains with a tarp or other protective covering.
 - 4) Prohibit photography of the find unless requested by an agency official or law enforcement officer.
 - 5) Station an individual at the location to prevent further disturbance until a law enforcement officer arrives.
 - b) The **Mine Manager** shall notify local law enforcement, the **U.S. Nuclear Regulatory Commission (NRC)** and the South Dakota State Archaeologist (State Archaeologist) within 48 hours of notification by the **Mine Manager**. The NRC will notify the BLM as a courtesy.
 - c) The **NRC** shall notify the South Dakota State Historic Preservation Office (SHPO), Indian Tribes, and other consulting parties within 48 hours of the discovery.
 - d) If local law enforcement determines that the remains are not associated with a crime, the **NRC** shall determine if it is prudent and feasible to avoid disturbing the remains. If the **NRC** in consultation with the **Powertech** determines that disturbance cannot be avoided, the **NRC** shall consult with the State Archaeologist, SHPO, Indian Tribes and other consulting parties to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The **NRC** shall ensure that the **Powertech** implements the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota State Archaeologist.
 - e) The **NRC** shall notify **Powertech** that they may resume construction activities in the protection zone upon completion of the plan authorized by the State Archaeologist.
- 2) In the event of an inadvertent discovery of human remains or funerary objects on BLM Administered Land, the following steps shall be taken according to NAGPRA as outlined in the Human Remains Section 11, subpart b of the Programmatic Agreement (PA).
 - a) The **On-site manager/Contractor** shall immediately halt construction activities within a 150 foot radius from the point of discovery (protection zone) and implement measures to preserve all finds in place and protect the discovery from looting and vandalism. Construction activities may continue outside this protection zone. No digging, collecting or moving human remains or other items shall occur in the protection zone after the initial discovery. Protection measures would include the following.

- 1) Preserve the find in place.
- 2) Flag the buffer zone around the find spot.
- 3) Keep workers, press, and curiosity seekers away from the find spot.
- 4) Tarp the find spot.
- 5) Prohibit photography of the find unless requested by an agency official.
- 6) Have an individual stay at the location to prevent further disturbance until a BLM Federal Agency Representative arrives.

b) The **On-site Manager/Contractor** shall notify the **U.S. Bureau of Land Management (BLM) (on BLM land)**. Immediately contact the federal agency official of the discovery by telephone or email. The federal agency official would include BLM Law Enforcement; BLM Field Office Manager, BLM Archaeologist, BLM Deputy Historic Preservation Officer or State Tribal Coordinator.

c) The **BLM** shall notify the Local Law Enforcement, South Dakota State Archaeologist, South Dakota State Historic Preservation Office (SHPO), Indian Tribes, NRC, and other consulting parties within forty-eight (48) hours of the discovery.

d) Inadvertent discovery of Native American remains and objects. In the event the human remains are of Native American descent then the agency will follow protocol as set forth in NAGPRA, 43 CFR 10, Subpart B.

Contact Information:

James K. Haug, State Archaeologist
South Dakota State Historical Society
Archaeological Research Center
P.O. Box 1257
Rapid City, SD 57709
(605) 394-1936

Katie Lamie, Repository Manager
South Dakota State Historical Society
Archaeological Research Center
P.O. Box 1257
Rapid City, SD 57709
(605) 394-1936

Paige Olson, Review and Compliance Coordinator
South Dakota State Historical Society
State Historic Preservation Office
900 Governors Drive
Pierre, SD 57501
(605) 773-3458

Federal Agency Contact
Haimanot Yilma
Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20852
(301) 415-8029
Haimanot.Yilma@nrc.gov

Brenda Shierts, Archaeologist
Bureau of Land Management
BLM-South Dakota Field Office
310 Roundup Street
Belle Fourche, SD 57717
(605) 723-8712
bshierts@blm.gov